

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

IRVIN WESLEY JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

June 20, 2013

No. 310443

Wayne Circuit Court

LC No. 11-009686-FC

Before: JANSEN, P.J., and CAVANAGH and MARKEY, JJ.

PER CURIAM.

Defendant was convicted following a bench trial of two counts of assault with intent to commit murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He appeals as of right, and we affirm.

Defendant became involved in a fight among several women, including his sister. Defendant initially tried to break up the fight, but then started fighting some of the women himself. At some point, defendant disengaged himself from the fight, entered a nearby garage, and came out of the garage shooting at the crowd. Two persons who were not involved in the fight were injured. In addition to the weapons offenses, defendant was charged in the alternative with two counts of assault with intent to commit murder, two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and two counts of felonious assault, MCL 750.82. The trial court rejected defendant's claim of self-defense and found defendant guilty of two counts of assault with intent to commit murder, felon in possession of a firearm, and felony-firearm. Defendant's sole claim on appeal is that the trial court's findings of fact were insufficient to establish that he acted with the requisite intent to kill to be guilty of assault with intent to commit murder.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). This

Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

"A judge who sits without a jury in a criminal case must make specific findings of fact and state conclusions of law." *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). The trial court's factual findings are sufficient as long as it appears that the court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995); *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). The court is not required to make specific findings of fact regarding each element of the crime charged. *Id.*

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). While "there are several intents which can support a murder conviction," *People v Guy Taylor*, 422 Mich 554, 567; 375 NW2d 1 (1985), "[a] defendant is guilty of assault with intent to murder only if there is an actual intent to kill." *People v Burnett*, 166 Mich App 741, 757; 421 NW2d 278 (1988). "Intent to inflict great bodily harm or wanton and willful disregard of the recklessness of one's conduct is insufficient to support a conviction for assault with intent to commit murder." *People v Cochran*, 155 Mich App 191, 193-194; 399 NW2d 44 (1986). "The intent to kill may be proved by inference from any facts in evidence," *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011), and "minimal circumstantial evidence of intent to kill is sufficient." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The intent to kill can be inferred from the defendant's statements and conduct and his use of a lethal weapon. *Guy Taylor*, 422 Mich at 567-568.

The trial court's factual findings were sufficient to establish that defendant committed an assault with the intent to commit murder. The trial court found that defendant had a motive to cause harm, that his intent was reflected by his statement that "you bitches are going to bleed," and that he carried out his threat by firing several bullets at a crowd of people. The court also found that defendant's actions were not justified by self-defense. Moreover, the court was aware that defendant had been charged in the alternative with lesser assault offenses, including assault with intent to do great bodily harm less than murder, and stated that it was declining to convict defendant of the lesser offenses in light of its "election" of the higher offense of assault with intent to commit murder. The intentional discharge of a firearm at someone within range, under circumstances that do not justify, excuse, or mitigate the crime, is sufficient to prove assault with intent to commit murder. *People v Lipps*, 167 Mich App 99, 105; 421 NW2d 586 (1988); *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). In light of the trial court's factual findings, its conclusion that defendant's actions constituted assault with intent to commit murder,

and its rejection of the lesser offenses of assault with intent to do great bodily harm less than murder and felonious assault, it is apparent that the trial court found that defendant acted with the specific intent to kill. Because the court's findings indicate that the court was aware of the issues in the case and correctly applied the law, its factual findings were sufficient.

Affirmed.

/s/ Kathleen Jansen  
/s/ Mark J. Cavanagh  
/s/ Jane E. Markey